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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,822	10/12/2000	Harry J. Chmielewski	H-35590	5377

56679 7590 01/26/2007  
GOSZ AND PARTNERS, LLP  
450 BEDFORD STREET  
LEXINGTON, MA 02420

EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/686,822

Applicant(s)

CHMIELEWSKI, HARRY J.

Examiner

C. Lynne Anderson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,6,7,9-13,17,18,20,22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,7,9-13,17,18,20,22 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 6, 7, 9-13, 17, 18, 20, 22, and 24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, 9, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura et al. (5,164,459).

Kimura discloses a superabsorbent composition comprising an underneutralized superabsorbent polymer in which less than 50% of the functional groups are sodium neutralized, as disclosed in column 3, lines 31-34. The composition further comprises a double hydroxide anionic clay, as disclosed in column 6, lines 11-27. The superabsorbent polymer and the clay are present in a ratio of 1:10 to 1:20, as disclosed in column 6, lines 28-32.

With respect to claim 6, the clay is hydrotalcite, as disclosed in column 6, line 16.

With respect to claim 7, the claim discloses a product-by-process limitation. The claim is drawn to an article, and the final product disclosed by Kimura is structurally identical to the product claimed. Kimura therefore discloses the article disclosed in the claim.

With respect to claim 9, the superabsorbent polymer and the clay are present in a ratio of 1:10, as disclosed in column 6, lines 28-32.

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With respect to claim 22, less than 40% of the functional groups of the polymer are sodium neutralized, as disclosed in column 3, lines 31-34.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (5,164,459) in view of Jones, Sr. (3,794,034).

Kimura discloses all aspects of the claimed invention but remains silent as to the pH range. Jones discloses an absorbent article having a pH in the range of 3.5 to 6.0, as described in column 1, lines 34-40. This pH range is preferred for absorbent articles because it inhibits bacterial growth, as disclosed in column 1, lines 52-56. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the composition of Kimura with a pH in the range of 3.5-6.0, as taught by Jones, to inhibit bacterial growth.

Claims 10-12, 17-18, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (5,164,459) in view of Masaki et al. (5,821,179).

Kimura discloses all aspects of the claimed invention with the exception of the absorbent article comprising a topsheet, backsheet, and the absorbent core comprising fluff pulp in addition to the superabsorbent composition. Kimura discloses the

superabsorbent composition is useful as a component in a sanitary napkin or diaper, both of which are well-known to comprise superabsorbent compositions in their absorbent cores, and to further comprise a topsheet and a backsheet.

Masaki discloses an absorbent article 100, as shown in figure 12, comprising a liquid pervious topsheet 1, a liquid impervious backsheet 3, and an absorbent core 2. The absorbent core 2 includes fluff pulp 12 and a superabsorbent composition 16, as shown in figure 1B. The mixture of pulp and superabsorbent reduces gel blocking, as disclosed in column 7, lines 7-13.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to produce an absorbent article comprising the superabsorbent composition of Kimura with the structure taught by Masaki to reduce gel blocking of the superabsorbent composition.

With respect to claims 11-12, Kimura, as modified by Masaki, discloses all aspects of the claimed invention with the exception of the superabsorbent present in the amount ranging from about 0.2 to about 0.8 grams per gram of fluff pulp. It would have been obvious to one of ordinary skill in the art at the time of invention to include the superabsorbent in the range of about 0.2 to about 0.8 grams per gram of fluff pulp, since it has been held that where the general conditions of the claim (i.e. a ratio of superabsorbent to fluff pulp) are known in the art, finding the optimum or workable ranges requires only routine skill in the art.

With respect to claim 17, the clay is hydrotalcite, as disclosed in column 6, line 16.

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With respect to claim 18, the claim discloses a product-by-process limitation.

The claim is drawn to an article, and the final product disclosed by Kimura is structurally identical to the product claimed. Kimura therefore discloses the article disclosed in the claim.

With respect to claim 20, the superabsorbent polymer and the clay are present in a ratio of 1:10, as disclosed in column 6, lines 28-32.

With respect to claim 24, Kimura discloses less than 40% of the functional groups are neutralized, as disclosed in column 3, lines 31-34.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. (5,164,459) in view of Masaki et al. (5,821,179), and further in view of Jones, Sr. (3,794,034).

Kimura, as modified by Masaki, discloses all aspects of the claimed invention but remains silent as to the pH range. Jones discloses an absorbent article having a pH in the range of 3.5 to 6.0, as described in column 1, lines 34-40. This pH range is preferred for absorbent articles because it inhibits bacterial growth, as disclosed in column 1, lines 52-56. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the composition of Kimura with a pH in the range of 3.5-6.0, as taught by Jones, to inhibit bacterial growth.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CNA  
cla  
January 19, 2007

TATYANA ZALUKAEVA  
PRIMARY EXAMINER

